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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,718	11/24/2003	Michael H. Ostrowski	550299.00070	5395
26710	7590	11/02/2005		
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			EXAMINER NGUYEN, TUAN N	
			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/720,718	OSTROWSKI ET AL.	
	Examiner	Art Unit	
	Tuan N. Nguyen	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
 4a) Of the above claim(s) 8,13-15,27,30,34,38 and 40-42 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-7,9-12,16-26,28,29,31-33,35-37,39 and 43 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/24/03 & 9/17/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species I: Fig. 1 in the reply filed on 8/1/05 is acknowledged. Accordingly, claims 8, 13-15, 27, 30, 34, 38 and 40-42 are withdrawn from further consideration.

Claim Objections

2. Claims 22-26, 28, 29, 31-33, 35-37, 39 and 43 are objected to because of the following informalities: since the applicant elected Species I: Fig. 1, which is being referred to as a whirlpool basin; therefore, the limitations in lines 3-4 of claims 22 and 39, except for "whirlpools," are considered as non-equivalent. Furthermore, "bathtubs" and "spas and other plumbing fixtures" thereof also lack antecedent basis in the specification. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-7, 9-12, 16-21-26, 28, 29, 31-33, 35-37, 39 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, it is unclear as to what the applicant is trying to claim with the language "is dedicated to" in lines 26-27.

With respect to claim 2, similar to claim 1 (see line 2 of claim 2).

With respect to claim 6, the non-equivalent language "and/or" in line 6 cause the claim to be indefinite because it is unclear as to whether multi controls or a single control is being claimed.

With respect to claim 22, it is unclear as to what structures constitute "other plumbing fixtures" on line 5.

With respect to claim 29, similar to claim 1 (see line 2 of claim 29).

With respect to claim 35, similar to claim 6 (see line 6 of claim 35).

With respect to claim 39, it is unclear as to what structures constitute "other plumbing fixtures" on line 5.

With respect to claim 43, similar to claim 1 (see line 2 of claim 43).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 10, 16, 17, 20-22-26, 28, 29, 31, 32, 35, 39 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Frederick.

In regard to claims 22 and 26, Frederick discloses an assembly for rapidly delivering water to a basin comprising a whirlpool basin; a water storage tank (28) dedicated to the assembly; and a system (see Fig. 2) capable of delivering water from the tank to the basin at a rate of at least 75 gallons/minute (see col. 5, line 33 et seq.).

In regard to claims 1-5, 7, 10, 16, 17, 23 and 24, the system comprises a pressure pump (16).

In regard to claims 20 and 25, Frederick discloses jet orifices (26).

In regard to claims 28 and 29, the assembly comprises two water storage tanks, one storage tank (housing of 16) being for containing "cold water" and the other storage tank (28) being for containing "hot water."

In regard to claims 21 and 31, the storage tanks would inherently vented during the basin fill cycle since water would enter and fill the pipes and entire system during fill cycle.

In regard to claims 32, 33, 39 and 43, the tank (28) is a conduit, which would inherently has a passageway cross-sectional area of at least 5 square inches since it allow the assembly to deliver above 75 gallon per minute.

In regard to claims 6 and 35, the assembly would inherently comprises controls for monitoring temperature of water in the basin since it has a heater and for controlling heating of water in the tank.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11, 12, 18, 19 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frederick.

In regard to claims 11, 12, 19 and 37, the rate exceeding 500, 750, or 800 gallons/minute as claimed would have been obvious through the change of motor speed as taught by Frederick (see col. 5, line 33 et seq.).

In regard to claim 18, to employ a centrifugal pump (if not already) in place of the pump of Frederick would have been obvious to one having ordinary skill in the analogous art.

6. Claims 9 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frederick in view of Johnson.

Although the assembly of the Frederick reference does not include means for inhibiting resupply of water as claimed, attention is directed to the Johnson reference which discloses an analogous assembly for delivering water, which further includes a means for inhibiting resupply of water as claimed (see Fig. 2) for monitoring and controlling the level of water in a pool (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Frederick assembly, means for inhibiting resupply of water as, for example, taught by Johnson in order to allow monitoring and controlling the level of water in the whirlpool.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The article title "Sizing Plastic Pipelines for Water on the Range" discloses pipe sizes versus water flow rate. Hollander et al., Eddas et al., and Todd, Jr.

discloses other water heating devices. Stevens, II discloses a water temperature and level regulator for a basin.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tuan Nguyen
Primary Examiner
Art Unit 3751
10/31/05

TN